



July 20, 1999

Ms. Acie Craig McAda
Attorney at Law
P.O. Box 311734
New Braunfels, Texas 78131

OR99-2041

Dear Ms. Kenedy:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 127199.

The City of Kenedy received a request for a police investigation report. You assert that the information requested is protected from disclosure under section 552.108 of the Government Code. Section 552.108 is divided into subsections (a), (b), and (c). Subsection (c) provides that "basic information about an arrested person, an arrest, or a crime" is not excepted from disclosure under this section. Subsection (b) provides an exception for internal records of a law enforcement agency or prosecutor that are maintained for the agency or prosecutor's internal use in matters relating to law enforcement or prosecution. Subsection (a) is of broader scope, more generally concerning records held by a law enforcement agency or prosecutor that deal with the detection, investigation, or prosecution of crime. You assert that both subsections (a) and (b) of section 552.108 are applicable to protect the records from release. However, as the request appears to cover information other than the police department's own internal records, we will address your arguments under subsection (a) of section 552.108.

Generally, a governmental body claiming an exception from disclosure under section 552.108(a)(1) must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *Ex parte Pruitt*, 551 S.W. 2d 706 (Tex. 1977). A governmental body may show that release of information would interfere with law enforcement by affirmatively stating to this office that the information at issue pertains to an ongoing criminal investigation or pending criminal case.

A governmental body claiming section 552.108(a)(2) should demonstrate that the requested information relates to a concluded criminal investigation that has come to some type of final result other than a conviction or deferred adjudication. A governmental body may show the applicability of section 552.108(a)(2) by affirmatively stating to this office that the criminal investigation or prosecution has concluded, but that the conclusion was a result other than conviction or deferred adjudication.

A governmental body asserting the applicability of section 552.108(a)(3) must demonstrate either that the records at issue were prepared by the prosecutor in anticipation of or in the course of preparing for criminal litigation, or that the records at issue actually reflect the mental impressions or legal reasoning of the prosecutor.

You have not explained how section 552.108 is applicable to any of the records at issue. The records thus may not be withheld from disclosure under section 552.108.¹

We note that some of the records at issue are confidential emergency medical services records and may be released only as provided by chapter 773 of the Health and Safety Code. Section 773.091 of the Health and Safety Code provides, in part:

(b) Records of the identity, evaluation or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

....

(g) The privilege of confidentiality under this section does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services. . . .

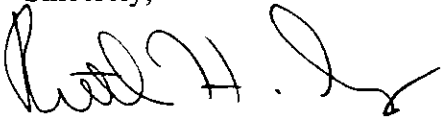
Section 773.091(b) thus protects from disclosure, except as provided by chapter 773, the emergency medical service records to the extent that they supply information as to the

¹We also note that the submitted records include an autopsy report, which is public by statute. Section 11 of article 49.25 of the Texas Code of Criminal Procedure provides that autopsy reports are public records. See Open Records Decision No. 529 at 4 (1989)

identity, evaluation, or treatment of patients. *See* Open Records Decision No. 598 (1991).²
We have marked these records for your convenience.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ruth H. Soucy', with a stylized flourish at the end.

Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref: ID# 127199

Encl. Marked documents

cc: Ms. Linda Schmidt
124 Bluebonnet
Kenedy, Texas 78119
(w/o enclosures)

² Open Records Decision No. 598 (1991) addresses a release of records under the Medical Practice Act, article 4495b, V.T.C.S. The opinion notes section 773.091 of the Health and Safety Code, and states:

Section 773.091 thus provides for the same confidentiality, exceptions to confidentiality, and requirements for release of the information at issue as does section 5.08 of the Medical Practice Act, without conflicting with the provisions of that act. . . . Our analysis under the Medical Practice Act is therefore equally applicable to a consideration of the issue under the Health and Safety Code provisions.